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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/243,997 02/04/99 SILVERMAN

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EXAMINER

HM22/0705

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FARMINGTON HILLS MI 48334

SHIPPEN, M

ART UNIT

PAPER NUMBER

1621
DATE MAILED:

07/05/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/243,997

Applicant(s)
Richard B. Silverman, et al.

Examiner
Michael L. Shippen

Group Art Unit
1621



☒ Responsive to communication(s) filed on Feb 14, 2000 and Mar 1, 2000.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire one month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 52-58 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 52-58 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Claim Objections

Claims 52-58 are objected to as depending claim 46 which has not been entered.

As pointed out to applicants in Paper No. 4, the paper filed concurrently with the application labeled PRELIMINARY AMENDMENT has not been entered.

In applicants response they say they have filed the application in accordance with the rule change of December, 1998 (it is believed that applicants are referring to the rule changes of December 7, 1997). It is not apparent what changes to the rules applicants are referring to. As amended 37 C.F.R. § 1.53(b) does not provide for an applicant to file an application in the manner in which applicants filed the instant application. Any amendments to the application must be made in accordance with 37 C.F.R. § 1.121.

Election/Restriction

Claims 52-56 are Markush type claims reading on independent and distinct inventions. Members of the Markush group are so unrelated and diverse that a prior art reference anticipating the claims with respect to some of the members would not render the claims obvious under 35 U.S.C. § 103 with respect to all of the other members. Accordingly, applicants are required under 35 U.S.C. § 121 to provisionally elect a single disclosed and claimed species, i.e., a single active agent. The

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provisional election will be given effect in the event the claims are not found allowable, MPEP § 803.02.


Should applicants traverse, they should submit evidence or identify such evidence now of record showing the various species to be obvious variants. In such an instance, if the examiner finds one of the species anticipated by the art, the evidence may be used in a rejection under 35 U.S.C. § 103 of the other species.

Applicants are advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicants are reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Michael L. Shippen** whose telephone number is **(703) 308-4635**. The Examiner's normal tour of duty is 7:30 AM to 4:00 PM. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is **(703) 308-1235**. The official group FAX machine number is **(703) 308-4556**.

MShippen
July 2, 2000


MICHAEL L. SHIPPEN
PRIMARY EXAMINER
ART UNIT 1621